Before the

Federal Communications Commission

Washington, D.C. 20554

In the Matter Of	)	
	)	
Petition for Declaratory Ruling	)	Docket No _____
	)	

PETITION FOR DECLARATORY RULING

Arthur V. Belendiuk, individually and as a member of the firm of Smithwick & Belendiuk, P.C., pursuant to Section 1.2 of the rules,[1] petitions the Federal Communications Commission for a declaratory ruling that the Verizon Wireless standard form customer agreement violates Section 201(b) of the Communications Act insofar as it unreasonably limits refunds and damages to customers who dispute charges to a 180-day service period, and further that this provision unlawfully conflicts with the two-year statute of limitations in Section 415 of the Communications Act for actions at law and complaints filed with the agency.

Background

Arthur Belendiuk (petitioner or Belendiuk) is a principal in the Washington, D.C. law firm of Smithwick & Belendiuk, P.C. and has been practicing before the Commission for more than three decades. In the course of researching a Verizon Wireless (VZW) billing issue raised

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[1] § 1.2 Declaratory rulings.

(a) The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.

(b) The bureau or office to which a petition for declaratory ruling has been submitted or assigned by the Commission should docket such a petition within an existing or current proceeding, depending on whether the issues raised within the petition substantially relate to an existing proceeding. The bureau or office then should seek comment on the petition via public notice. Unless otherwise specified by the bureau or office, the filing deadline for responsive pleadings to a docketed petition for declaratory ruling will be 30 days from the release date of the public notice, and the default filing deadline for any replies will be 15 days thereafter.

by a potential client, petitioner examined his own VZW billing statements and was surprised to find that the company had been charging him monthly Baltimore City tax and 911 fees for at least twelve years. Since Belendiuk has never lived in Baltimore or had any business or other interests in the city, VZW agreed to remove the objectionable charge from his bill going forward, but did not agree to refund his past payments of the tax.

The VZW customer agreement contains a provision on dispute resolution, which limits the right of a customer to contest a charge, either in small claims court or in arbitration, to 180 days from the date the charge was incurred or the bill was received:

> **How and when can I dispute charges?**
>
> If you're a Postpay customer, you can dispute your bill within 180 days of receiving it, but unless otherwise provided by law or unless you're disputing charges because your wireless device was lost or stolen, you still have to pay all charges until the dispute is resolved. If you're a Prepaid customer, you can dispute a charge within 180 days of the date the disputed charge was incurred. **YOU MAY CALL US TO DISPUTE CHARGES ON YOUR BILL OR ANY SERVICE(S) FOR WHICH YOU WERE BILLED, BUT IF YOU WISH TO PRESERVE YOUR RIGHT TO BRING AN ARBITRATION OR SMALL CLAIMS CASE REGARDING SUCH DISPUTE, YOU MUST WRITE TO US AT THE CUSTOMER SERVICE ADDRESS ON YOUR BILL, OR SEND US A COMPLETED NOTICE OF DISPUTE FORM (AVAILABLE AT VERIZONWIRELESS.COM), WITHIN THE 180–DAY PERIOD MENTIONED ABOVE. IF YOU DO NOT NOTIFY US IN WRITING OF SUCH DISPUTE WITHIN THE 180–DAY PERIOD, YOU WILL HAVE WAIVED YOUR RIGHT TO DISPUTE THE BILL OR SUCH SERVICE(S) AND TO BRING AN ARBITRATION OR SMALL CLAIMS CASE REGARDING ANY SUCH DISPUTE.**[2]

By this non-negotiable, adhesion contract VZW effectively imposes a 180-day statute of limitations on customer claims to recover overcharges. 180 days is substantially shorter than and

[2] https://www.verizonwireless.com/b2c/support/customer-agreement

indeed conflicts with the two-year limitation period in Section 415 of the Communications Act for overcharging claims brought as actions at law (in court or arbitration) or by complaint filed with the Commission:

> (c) Recovery of overcharges
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> For recovery of overcharges action at law shall be begun or complaint filed with the Commission against carriers within two years from the time the cause of action accrues, and not after, subject to subsection (d) of this section, except that if claim for the overcharge has been presented in writing to the carrier within the two-year period of limitation said period shall be extended to include two years from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

Belendiuk wishes to pursue his claim against VZW via the dispute resolution options available to him under the customer agreement, either in arbitration or in small claims court. If the 180-day limitation period is allowed to stand, however, he like millions of VZW customers will be barred from recovering more than a fraction of the overcharges unknowingly paid and later discovered. Nor is VZW the only wireless company unreasonably restricting its customers from recovering carrier overcharges. AT&T limits recovery to 100 days from the date the customer receives the disputed bill.[3] T-Mobile and Sprint limit refunds to 60 days after the customer receives the disputed bill.[4] Accordingly, a Commission ruling declaring the VZW 180-day contract term unlawful effectively would require other wireless providers to lengthen the period during which consumers reasonably may contest incorrect charges and receive refunds.

The Verizon Wireless 180-Day Limitation on Disputes and Refunds Violates Sections 201(b) and 415 of the Communications Act

[3] https://m.att.com/shopmobile/legal/terms.wirelessCustomerAgreement.html.

[4] https://shop2.sprint.com/en/legal/os_general_terms_conditions_popup.shtml. http://www.t-mobile.com/templates/popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions.

180 days is simply too short a time in which to expect wireless users to review their monthly bills in detail, detect questionable charges, speak with VZW service personnel, and failing to obtain satisfaction, make the effort to file the dispute notification forms the carrier requires. While some time bar is reasonable, 180 days is not. The billing error for years eluded Belendiuk, an experienced attorney in an FCC practice. Only a very small percentage of VZW customers take the trouble to scrutinize monthly bills and contact VZW service with questions. Even when VZW admits that it overcharged a customer and agrees to a refund or credit, it will do so for just six months back. When VZW refuses the claim, the few diehard customers that demand arbitration or go to small claims court largely will be stymied by VZW asserting the 180-day limitation period as a contract defense.

Section 201(b) of the Communications Act provides that "All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful." VZW's forced 180-day limitation unjustly and unreasonably curtails the ability of customers to seek redress for overcharges and disputed services. It severely limits VZW's liability, enabling the carrier to keep overcharges and other payments to which it is not entitled.

The statutory two-year period for bringing actions at law or filing a complaint with the Commission in Section 415 of the Communications Act is an apt standard for evaluating the reasonableness of VZW's practice under Section 201(b). The conflict between the 180-day provision and Section 415 is sufficient reason to strike it. The Communications Act of 1934 originally established a one-year statute of limitations in Section 415. In 1974 at the Commission's request Congress amended the Act extending the time from one year to two years.

Testifying at a Congressional hearing, then Chairman Richard Wiley explained why the Commission sought this amendment:

> Under present conditions, the 1-year period is often too short for a user of communications services to discover that he has been incorrectly charged or otherwise damaged and to file a complaint or bring suit. In 1934, when the 1-year statute was adopted, most interstate communications were simple messages, such as long-distance telephone or telegraph. These two forms of communication were such that the charges for each chargeable element of service were relatively uncomplicated. There was no undue burden on the user to require complaint or suit within 1 year.
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> Today, however, communication services are becoming more and more sophisticated, and many businesses and organizations have vast, complex, private -line networks. These services remain in place for extended periods, and the computation of the proper charge under the tariff is often an involved undertaking…
> The 1-year statute can cause further hardship in cases where the carrier is ready and willing to refund overcharges for services performed more than 1 year back. The statute not only bars the remedy but also destroys the liability…Because after just 1 year there is no longer a liability, the carrier may not feel obliged to make a bona fide refund.[5]

In the 42 years since Chairman Wiley asked Congress to enact a two-year period and testified about the growing complexity of communications services and the difficulty users face in deciphering bills, the situation has gotten dramatically worse. This was an era in which AT&T and the Bell System was the monopoly provider of landline telephone service. There was no competition; no multiplicity of providers; no wireless service; no Internet broadband; no data charges; no surcharges on the bill for universal service and other support programs that were made explicit after divestiture; no surcharges for 911, number portability or TRS, or carrier conceived regulatory charges and administrative charges. If communications services consumers

[5] Hearing before the Subcommittee on Communications of the Committee on Commerce, United States Senate, 93rd Congress, 2nd Session on S. 1227, March 25, 1974.
http://njlaw.rutgers.edu/collections/gdoc/hearings/7/74602190/74602190_1.pdf

needed a two-year statute of limitations to protect their interests in 1974, they surely need at least that much time today.

VZW's service contract binds customers to resolve disputes only by arbitration or in small claims court, and only if they comply with the 180-day written notice requirement. It unreasonably limits VZW's liability to 180 days. In another proceeding the Commission recently proposed to prohibit Broadband Internet Access Service ("BIAS") providers from compelling arbitration in their contracts with customers.[6] The 180-day provision in the VZW customer agreement raises an independent question of lawfulness that will not be resolved by the Commission's decision on the mandatory arbitration requirements in BIAS provider contracts.

Since the VZW contract prohibits Belendiuk from going to court, other than small claims court, he has no choice but to arbitrate his claim. If he were permitted to bring a lawsuit, the court likely would order the parties to file a petition for declaratory ruling on the lawfulness of the 180-day period, since the issue falls within the Commission's primary jurisdiction and expertise. Unlike courts, arbitrators do not order referrals. Nonetheless a Commission ruling on the issue will help produce a fair result in the arbitration. The Commission consistently acts on court referrals in a reasonable time frame and it should do so here to preserve Belendiuk's right to a remedy for VZW's erroneous charges that it will not refund.

Relying on the two-year statute that the Commission successfully urged Congress to enact in Section 415 as a standard for reasonable consumer protection and as a statutory right, petitioner asks the Commission to declare the 180-day limitation period in the Verizon Wireless

[6] Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, WC Docket No. 16-106, Notice of Proposed Rulemaking, 31 FCC Rcd 2500, 2586-2587 (April 1, 2016).

customer agreement to be unlawful in conflict with Section 415 and in violation of Section 201(b) of the Communications Act, and to do so expeditiously in order that he may pursue the legal remedies available to him on a timely basis.

Respectfully Submitted,

By: _____/s/_____
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